

APPEAL NO. 041170
FILED JULY 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 10, 2004. The hearing officer determined that the respondent (claimant) sustained a compensable low back injury on _____, and that the claimant had disability from November 11, 2003, to the date of the CCH.

The appellant (carrier) appealed, contending that the claimant's current back condition is a continuation of a 2001 injury and that the claimant had not sustained a new injury and did not have disability. The claimant responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant had sustained a prior compensable low back injury on (prior date of injury). The claimant testified that that injury had resolved and that she returned to work without restrictions. The claimant, a cashier, asserts that she sustained a new low back injury on _____, lifting a 55-pound bag of dog food, and that she saw a doctor on November 11, 2003. The claimant was taken off work on November 11, 2003, and was continued off work since that date. The carrier contends that the claimant's current condition is an exacerbation or continuation of her 2001 injury and raises questions whether the claimant sustained any injury.

Questions of whether the claimant sustained a new injury (as opposed to a continuation of an old injury), which register the claimant may have been using, whether the claimant checked out any dog food at the time and on the day in question, whether the claimant had complaints of back pain a few days prior to the date of injury, and whether the claimant danced one or several dances in February 2004 are all questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence in favor of the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas Knapp
Appeals Judge

CONCUR:

Elaine Chaney
Appeals Judge

Edward Vilano
Appeals Judge